

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 PETER JAMES CARR,

11 Petitioner,

12 v.

13 JASON BENNETT,

14 Respondent.

CASE NO. C24-1377JLR

ORDER

15 **I. INTRODUCTION**

16 This matter comes before the court on the report and recommendation (“R&R”) of  
17 United States Magistrate Judge Brian A. Tsuchida. (R&R (Dkt. # 4).) On August 30,  
18 2024, *pro se* Petitioner Peter James Carr filed a motion for leave to proceed *in forma*  
19 *pauperis* (IFP Mot. (Dkt. # 1)), a proposed petition for a writ of habeas corpus pursuant  
20  
21  
22

1 to 28 U.S.C. § 2241<sup>1</sup> and a memorandum in support of his petition (Petition (Dkt. # 1-1);  
 2 Memo. (Dkt. # 1-3)), a request for certification (Req. Cert. (Dkt. # 1-4)), a proposed  
 3 motion to waive a Magistrate Judge's report and recommendation in his case (MJ Mot.  
 4 (Dkt. # 1-5)), and a proposed motion to appoint standby counsel (Appt. Mot.  
 5 (Dkt. # 1-6)). Neither Mr. Carr nor Respondent Jason Bennett objected or otherwise  
 6 responded to Magistrate Judge Tsuchida's report and recommendation recommending  
 7 dismissal of Mr. Carr's petition by the October 2, 2024 deadline. (R&R at 10; *see*  
 8 *generally* Dkt.)<sup>2</sup> Having carefully reviewed all of the foregoing, along with all other  
 9 relevant documents, and the governing law, the court ADOPTS the report and  
 10 recommendation (Dkt. # 4), DISMISSES Mr. Carr's habeas corpus petition, STRIKES  
 11 Mr. Carr's application to proceed *in forma pauperis*, request for certification, proposed  
 12 motion to waive a Magistrate Judge's report and recommendation, and proposed motion  
 13 to appoint standby counsel, and DENIES Mr. Carr's accompanying motions.

## 14 II. ANALYSIS

15 A district court has jurisdiction to review a magistrate judge's report and  
 16 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "A judge of the court  
 17 may accept, reject, or modify, in whole or in part, the findings or recommendations made

---

18 <sup>1</sup> As stated in the report and recommendation, because Mr. Carr is in custody and  
 19 challenges his state criminal conviction and sentence, his petition is properly construed as a  
 20 petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (R&R at 5.)

21 <sup>2</sup> Following Magistrate Judge Tsuchida's R&R, Mr. Carr did, however, file a proposed  
 22 motion to order answer (Dkt. # 5), a proposed motion to produce the record (Dkt. # 7), a  
 proposed motion to supplement the record (Dkt. # 6), a proposed motion to appoint counsel (Dkt.  
 # 9), a proposed motion requesting production of the record (Dkt. # 10), and a proposed motion  
 to order response (Dkt. # 11).

1 by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “The statute makes it clear that the  
2 district judge must review the magistrate judge’s findings and recommendations *de novo*  
3 *if objection is made*, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114,  
4 1121 (9th Cir. 2003) (en banc).

5 Mr. Carr is a Washington state prisoner incarcerated at Stafford Creek Corrections  
6 Center. (R&R at 1.) He challenges the validity of his 2012 King County conviction and  
7 “life sentence imposed [on him] without a final judgment and sentence, now governed by  
8 the Parole Board.” (Petition at 3.) Specifically, Mr. Carr asserts that RCW 9.94A.507—  
9 the statute under which he was sentenced—is “unconstitutional on its face and operating  
10 in violation of [his] Sixth Amendment right to a jury trial.” (Petition at 7; *see also*  
11 Memo. at 2 (citing *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Alleyne v. United*  
12 *States*, 570 U.S. 99 (2013); and *Blakely v. Washington*, 542 U.S. 296 (2004)).) Because  
13 the parties did not object to the factual or procedural background set forth in the report  
14 and recommendation, the court adopts that portion of the report and recommendation and  
15 does not repeat it here. (*See* R&R at 2-4; *see generally* Dkt.)

16 Magistrate Judge Tsuchida recommends that the court dismiss Mr. Carr’s petition  
17 without prejudice for lack of jurisdiction because the petition is an unauthorized second  
18 or successive petition within the meaning of 28 U.S.C. § 2244(b). (R&R at 7.)  
19 Magistrate Judge Tsuchida alternatively recommends that the court dismiss Mr. Carr’s  
20 petition with prejudice on the merits because his sentencing did not violate the Sixth  
21 Amendment. (*Id.* at 7-8.)  
22

1 The court has thoroughly examined the record before it and finds Magistrate Judge  
2 Tsuchida's reasoning persuasive in light of that record. The court has also independently  
3 reviewed Mr. Carr's petition and agrees with the reasoning and conclusions set forth in  
4 the report and recommendation. Accordingly, the court ADOPTS the report and  
5 recommendation, DISMISSES Mr. Carr's petition, STRIKES Mr. Carr's application to  
6 proceed *in forma pauperis*, request for certification, proposed motion to waive a  
7 Magistrate Judge's report and recommendation, and proposed motion to appoint standby  
8 counsel, and DENIES Mr. Carr's accompanying motions.

### 9 III. CONCLUSION

10 For the foregoing reasons, the court hereby ORDERS as follows:

11 (1) The court ADOPTS the report and recommendation (Dkt. # 4) in its entirety;

12 (2) The court DISMISSES Mr. Carr's habeas corpus petition (Dkt. # 1-1) without  
13 prejudice for lack of jurisdiction;

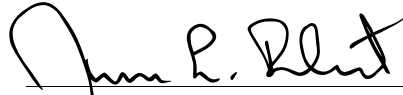
14 (3) The court STRIKES Mr. Carr's application to proceed *in forma pauperis* (Dkt.  
15 # 1), request for certification (Dkt. # 1-4), proposed motion to waive a Magistrate Judge's  
16 report and recommendation (Dkt. # 1-5), and proposed motion to appoint standby counsel  
17 (Dkt. # 1-6) as moot;

18 (4) The court DENIES Mr. Carr's proposed motion to order answer (Dkt. # 5),  
19 proposed motion to produce the record (Dkt. # 7), proposed motion to supplement the  
20 record (Dkt. # 6), proposed motion to appoint counsel (Dkt. # 9), proposed motion  
21 requesting production of the record (Dkt. # 10), and proposed motion to order response  
22 (Dkt. # 11) as moot;

1 (5) The court DENIES issuance of a certificate of appealability; and

2 (6) The court DIRECTS the Clerk to send copies of this Order to Mr. Carr and to  
3 Magistrate Judge Tsuchida.

4 Dated this 10th day of October 2024.

5 

6 JAMES L. ROBART  
7 United States District Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22